

# **National Conference of Commissioners on Uniform State Laws**

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May 6, 1998

RE: UCC Article 2B

Commissioners, ABA Advisors, and Other Interested Parties:

As a result of the decision of the Executive Committee of the National Conference of Commissioners on Uniform State Laws (NCCUSL) in July of 1995 to separate licensing of information, as distinguished from transactions in goods, from the revision of UCC Article 2, Sales, a separate Drafting Committee was appointed to develop an article of the UCC dealing with licensing and other transactions involving information, which was quickly designated UCC Article 2B.

The Drafting Committee held its first meeting in January of 1996 and has just concluded its fourteenth full Committee meeting. In addition, the Chair and Reporter have met with the NCCUSL's Committee on Style, the UCC Article 1 Drafting Committee, had special harmonization meetings with the Chair and Reporters of the UCC Article 2 Drafting Committee, and met with a wide range of interested groups to review provisions of various interim drafts. More than sixty organizations have been represented at Drafting Committee meetings. A draft of Article 2B was considered at length at the NCCUSL 1997 Annual Meeting.

Through the diligent work of Reporter Raymond Nimmer, the unwavering leadership of Committee Chair, Connie Ring, and the faithful and active participation of an unprecedented number of advisors and observers, the Drafting Committee has produced a comprehensive and well-balanced draft for consideration by NCCUSL at its 1998 Annual Meeting in Cleveland, Ohio.

The draft of Article 2B that is to be presented to the Conference in 1998 will be treated as a final draft for the purposes of consideration by the Committee of the Whole. As in any final reading, the Committee of the Whole is free to amend language in the draft. The Drafting Committee may be instructed to re-draft specific sections and to bring back to the floor the re-drafted provisions for further consideration.

By the end of the consideration by the Committee of the Whole, there should be no provisions left open for further drafting changes, other than normal styling changes by the Committee on Style.

The Committee received a number of suggestions on scope at its last Drafting Committee meeting that have been referred to a task force of the Committee to consider and make recommendations prior to the Annual Meeting. Accordingly there may be an errata sheet with a revised scope provision and perhaps some style and architectural changes at the Annual Meeting.

NCCUSL recognizes that there are interested parties who came late to the project, or due to industry circumstances, require more than average time for evaluation and to reach consensus. Further, NCCUSL's partner, the American Law Institute (ALI), reasonably needs time to study and review what will be the final product, with an opportunity to suggest further changes to better accommodate

their interests. In absence of the opportunity for review and to suggest further changes, unsatisfied parties may elect to oppose Article 2B's enactment. With that in mind, the Conference will not take a final vote by States on Article 2B at its 1998 Annual Meeting. Rather, it will schedule an additional Drafting Committee meeting in early November, shortly after the October ALI Council meeting, to consider any changes suggested by interested parties or the ALI that will facilitate acceptance of the Article. This will allow parties to consider a static draft which should facilitate evaluation and determination of where changes should properly be made.

In order for the Drafting Committee to have sufficient time to review and consider any such proposed changes, parties are requested to provide specific amendments in draft form with explanatory notes to NCCUSL's Chicago office no later than October 10th for distribution to the Drafting Committee. The suggestions of the ALI will be available immediately after its May Annual Meeting and its October Council meeting. This schedule gives interested parties and the ALI two and a half months to review Article 2B as it emerges from the 1998 Annual Meeting of the Conference in static form. With the additional two months preceding the NCCUSL Annual Meeting, a relative stable draft will be available to all for a total of four and a half months to review and formulate specific suggested amendments.

Assuming that the Drafting Committee adopts one or more changes at its November, 1998 meeting, Article 2B with those changes, would be then considered by the ALI Council in December and the ALI Membership in May of 1999, and brought before NCCUSL at its 1999 Annual Meeting for consideration by the Committee of the Whole. Only those sections or provisions changed since the 1998 Annual Meeting will be considered at the 1999 Annual Meeting. A final vote by the States will be taken on the Article in 1999, and the Article will then be ready for introductions and enactments in 2000.

I want to personally thank Committee Chair Connie Ring, Reporter Raymond Nimmer, the NCCUSL and ALI members of the Drafting Committee, the ABA Advisors, and all of the other Observers and participants in this Herculean task. We particularly recognize the patience of interested parties that long have labored on Article 2B and who believe it now is ready for enactment, but who also realize that enactment now for the reasons stated may actually harm their goal. I believe Article 2B will be a major contribution to the rapidly evolving law of cyberspace technology, that it will work to preserve for state enactment this important area of the law consistent with the recommendations in the White House paper issued last summer, and that it will assist in establishing the United States' position in developing the law in this area internationally.

Sincerely yours,

Gene N. Lebrun  
President